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COURT OF CRIMINAL APPEALS
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COURT OF CRIMINAL APPEALS
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COURT OF CRIMINAL APPEALS OF TEXAS

CRISPEN HANSON, Appellant

vs.

THE STATE OF TEXAS

APPELLANT'S MOTION FOR REHEARING

TO THE COURT OF CRIMINAL APPEALS OF TEXAS:

Crispen Hanson, Appellant, respectfully requests rehearing of the Court's decision in this case, issued on June 27, 2018.[1] As grounds for this motion, Appellant presents the following arguments and authorities.

STATEMENT OF THE CASE

Hanson was granted shock probation by the trial court. The trial court signed an order granting shock probation on June 15, 2015. CR. at 340. On the same date the trial court signed an amended judgment which suspended Hanson's prison sentence and stated that defendant had been sentenced to community supervision on June 15, 2015. CR. at 345. It also signed a document titled "Terms and Conditions

[1] Appellant was granted an extension until July 27, 2018 to file his motion for rehearing.

of Community Supervision" which stated that "on the 15th of June, 2015, defendant was placed on community supervision for a period of eight years." CR. at 347. On June 25, 2015, the trial court signed an "Amended Order" which was almost identical to its original order granting shock probation except the amended order included additional findings of fact that the original order granting shock probation did not. CR. at 353. Aside from additional findings of fact, everything else in the amended order is identical to what is contained in the first order. This includes the initial paragraph granting shock probation[2], a subsection on findings of fact, a subsection on the law, and a subsection on "the defendant qualifies for community supervision". The closing paragraph in the amended order is also identical to the closing paragraph in the first order.[3] In its "amended order" the trial court did not modify or amend the judgment signed on June 15, 2015 and it did not modify or amend the terms of conditions of community supervision, which stated that community supervision began on June 15, 2015.

[2] Interestingly, even the trial court's misspellings are carried over from the original order into the amended order. In the fourth line of both orders, "orders" is spelled "orderes".

[3] This Court points out that the style of the new order was different but does not claim that a different style has any type of independent legal significance.

ARGUMENT AND AUTHORITIES

This Court frames the issue as "whether the 'amended order' granting shock probation 'modifies a judgment' within the meaning of Article 44.01(a)(2). *Hanson v. State,* No. PD-0948-17, 2018 WL 3133690, at *2 (Tex. Crim. App. June 27, 2018). It then holds that the second order signed on June 25, 2015 does in fact modify a judgment. Consequently, the State's notice of appeal is timely, and the Eighth Court erred in dismissing the State's appeal.

This Court relies on the Eighth Court's purported concession that there are differences between the original order granting shock probation and the second order. However, it never points to any specific difference that is of any legal significance. The Eighth Court states that the two orders are not identical, but it also states that none of the differences have any independent legal significance. In its opinion, the Eighth Court points out that "[t]he court signed [a]n amended order on June 25, 2015 which included fourteen additional findings of fact not contained in the June 15, 2015 order, but the amended order did not include any substantive changes." . *State v. Hanson,* No. 08-15-00205-CR, 2017 WL 3167484, at *1 (Tex. App.—El Paso July 26, 2017). It later writes "While the trial court signed an amended order on June 25, 2015 for the ostensible purpose of adding additional findings of fact, the amended order did not include any substantive changes to the

initial order placing Hanson on community supervision for eight years." *Id.* at *2.

The Eighth Court's legal conclusion that the amended order did not include any substantive changes to the initial order placing Hanson on community supervision, thus it was not an order modifying a judgment within the meaning of Article 44.01(a)(2) is never addressed by this Court. While this Court states that if this were a situation where the amended order had no independent legal significance, a different result might be required, it fails to explain what legal significance if any, the added findings of fact, have in this case.

It is clear from the record that Hanson's community supervision began on June 15, 2015. The steps necessary to place Hanson on community supervision all occurred on June 15, 2015. This would include a judgment reflecting community supervision and the imposition of terms and conditions of community supervision. The order signed by the trial court on June 25, 2015 had no legal significance as it pertains to Hanson's community supervision. If at some point, the State were to file a motion to revoke Hanson's community supervision, it would necessarily allege that Hanson was placed on community supervision on June 15, 2015 and violated the conditions that were imposed on that same date. The June 25, 2015 order did not place Hanson on community supervision but simply provided further explanation from the trial court as to why it placed Hanson on community supervision. Much

like the order in *State v. Antonelli,* No. 958–01, slip op. at 1 (Tex. Crim. App. Sept. 11, 2002) (not designated for publication), the June 25th order in this case could not stand on its own nor did it purport to do so. And just like the order in *Antonelli*, the June 25th order did nothing more than provide additional reasons why the trial court granted shock probation.

Since the amended order signed on June 25, 2015 made no substantive change to the original order signed on June 15, 2015, it cannot create a new, separate right for the State to appeal. *See State v. Gobel,* 988 S.W. 2d 852, 853-54 (Tex. App. – Tyler 1999, pet. ref'd) (Dismissing the State's appeal as untimely on the basis that a nunc pro tunc order which made no substantive change in an original order created no new, separate right for the State to appeal under article 44.01(a)). The June 25th order in this case is not an appealable order and thus the Eighth Court's dismissal of the State's appeal should be affirmed.

PRAYER

Appellant prays that this Court reconsider its opinion dated June 27, 2018 and upon reconsideration, affirm the Eighth Court's opinion dismissing the State's appeal for want of jurisdiction.

Respectfully submitted,

/s/ Ruben P. Morales
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CERTIFICATE OF SERVICE

I certify that on July 27, 2018, a copy of Appellant's Motion for Rehearing was sent by email, through an electronic-filing-service provider, to petitioner's attorney: Raquel Lopez, raqlopez@epcounty.com.

I further certify that on July 27, 2018, a copy of Appellant's Motion for Rehearing was sent by email, through an electronic-filing-service provider, to the State Prosecuting Attorney, information@SPA.texas.gov.

/s/ Ruben P. Morales
Ruben P. Morales

CERTIFICATE OF COMPLIANCE

I certify that this document contains 975 words, as indicated by the word-count function of the computer program used to prepare it and complies with the applicable Texas Rules of Appellate Procedure.

/s/ Ruben P. Morales
Ruben P. Morales